

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

VICTOR WADE HOWENSTINE,

§

Petitioner,

§

VS.

§ CIVIL ACTION NO. C-09-247

RICK THALER,

§

Respondent.

§

**ORDER ADOPTING MEMORANDUM AND
RECOMMENDATION TO GRANT
RESPONDENT'S MOTION TO DISMISS**

On February 2, 2010, United States Magistrate Judge Brian L. Owsley signed a Memorandum and Recommendation recommending that petitioner's claims are time-barred and that the petition be dismissed. The Memorandum and Recommendation further recommended that the petitioner be denied a certificate of appealability. On February 16, 2010, respondent filed Objections to the Magistrate's Recommendations, and on February 25, 2010, petitioner filed objections to the Magistrate's Recommendations.

Having reviewed the findings of fact and conclusions of law therein, as well as the pleadings on file and petitioner's and respondent's objections, and having made a *de novo* disposition of those portions of the Magistrate Judge's recommended disposition to which objections were raised, *see Koetting v. Thompson*, 995 F.2d 37 (5th Cir. 1993), 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P.72(b), the Court hereby adopts as its own the findings and conclusions of the Magistrate Judge, subject to the following exception.

The Court does not adopt the Magistrate Judge's statements regarding the potential tolling effect of prison grievances that petitioner claims to have filed in this matter. (D.E. 22 at 8.) The Court recognizes the tolling rule with respect to prison grievances as

announced in Kimbrell v. Cockrell, 311 F.3d 361 (5th Cir. 2002), but concludes that it is not applicable in this case.

Accordingly, it is ORDERED that petitioner's petition is dismissed. Petitioner is denied a certificate of appealability.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 2nd day of March, 2010.



Janis Graham Jack
United States District Judge